THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION No.15269 of 2005

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Dated 20th December 2005

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Between:

1. Maddireddy Mastan Reddy,

son of Nagi Reddy, aged 32 years,

resident of Kovur village and mandal,

Nellore District and 7 others.

…..Petitioners.

And

1. The District Acqua Culture Authority,

rep. by its Chairman-cum- District Collector,

Nellore, Nellore district and 3 others.

…..Respondents.

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ORDER:

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This writ petition has been filed by the petitioners, who are 8 (eight) in number with a prayer to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the Mandal Revenue

Officer, Kovur village and mandal, Nellore District in demolishing petitioners' fresh water fish tanks situated in S.Nos.1000/1, 1000/2, 940, 939, 941, 942, 943, 944, 945 and 946 of Kovur village and mandal, Nellore District, as arbitrary and violative of Articles 14, 19, 21 and 300(A) of Constitution of India.

2. The petitioners converted their agricultural lands into fishponds. On a complaint made by the neighbouring land owners viz., S.Radha Krishna Reddy-4th respondent and two others, proceedings have been initiated against the petitioners by the Mandal Revenue Officer, Kovur-second respondent. The Mandal Revenue Officer-second respondent took the complaint on file as M.C.No.3 of 2001 and disposed of the same on 26.07.2003 with certain directions. The relevant portion of the order passed by the Mandal Executive Magistrate, in exercise of powers under Section 133 Cr.P.C., reads as follows:

> " It is a fact that agriculture lands should not be converted into prawn culture as per the directions of the Hon'ble Supreme Court. Regarding obtaining permission from the aqua culture authority this case will not come under the purview as the lands are not in the CRZ as clarified by the Assistant Director, Fisheries. But the decision of the Hon'ble Division Bench in writ appeal 700/2002 dated 24.04.2002 following the decision reported in 2002(1) ALD, 728, it is clear that prior permission should be obtained from the competent authority for conversion of agriculture lands into aqua culture. The prawn ponds are situated on the north of Dumpala Kalva, the irrigation canal and lands of the complainant situate on the south of the canal. According to field measurement book the width of the canal is 63 to 42 links, as such the contention of the complainant that the ponds are just adjacent to the patta land is not correct. It is a fact that the peripheral drainage has to be arranged by the aqua farmers. But the contention of the complainant that the fertility of his patta lands will be affected is far from the truth. According to the opinion of the Environmental Engineer the discharged effluents containing pollutants in discharged water of ponds are within the general standards and affecting productivity of the patta lands of complainant in future is only imagination and far from the truth. The complainant is already having 5 filter points in his patta lands and drawing water fully in second crop season and supplementing in the first crop season as per his own statement. As such the complaint is ignored, as he is also responsible for the reduction of the ground water table. In regard to issue of anti-dated certificate by the Village Administrative Officer for electricity service

connections, the complaint is an after thought and he would have made it before the electricity authority then and there. The complaint on formation of ponds contrary to 20-point guidelines etc., and damage to his patta lands on account of formation of bunds is imaginary and exaggeration. The prawn farmers have represented that the complainant occupied government channel and merged in his patta land to some extent and causing nuisance to free flow of water in Dumpala Kalva which is drainage and irrigation canal. This point was not referred to by the complainant. The complainant is raising crops in his patta lands as usual even after his complaint but there is no sign of damage to his crops for the past 3 years."

3. It appears that the petitioners made applications to the concerned authorities. Ultimately, a show cause notice came to be issued to the petitioners and thereupon the petitioners challenged the show cause notice by filing writ petition No.1264 of 2005. The said writ petition came to be dismissed on 01.02.2005. Relevant portion of the order reads as follows:

" Except where a show cause notice is issued by an authority not vested with the power, or where the show cause notice is issued, contrary to any specific provision of law, the validity of the same cannot be considered in a writ petition. The petitioners have already submitted their explanations to the show cause notice. They can be said to have suffered any grievance, if only any order is passed adverse to their interests.

Hence, the writ petition is dismissed, leaving it open to the petitioners to work out their remedies, in case the second respondent who issued the show cause notice passes any order, adverse to the interests of the petitioners. There shall be no order as to costs."

4. Subsequent to the orders passed in W.P.No.23027 of 2004 dated 17.01.2005, the Mandal Revenue Officer issued notices to the petitioners on 04.05.2005. Except B.Krishna Reddy and B.Bhaskar Reddy, other petitioners have not submitted any explanations. It appears that B.Krishna Reddy and B.Bhaskar Reddy gave undertaking on 26.05.2005 stating that they would close their aqua

culture by 31.08.2005. This factual aspect has been stated in the order impugned in the writ petition. The Mandal Revenue Officer, on considering the material brought on record, directed the petitioners to stop aqua culture in S.Nos.10001, 1000/2, 940, 939, 941, 942, 943, 944, 945 and 946 with immediate effect by order dated 02.07.2005. Hence, this writ petition.

5. Fourth respondent came on record as per the orders dated 24.11.2005 passed in W.P.M.P.No.23817 of 2005.

6. Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondents 1 to 3 and the learned counsel appearing for respondent No.4.

7. Learned counsel for the petitioners submits that the petitioners have made necessary applications to the competent authority for carrying out aqua culture in their agricultural lands. Since their applications are pending for consideration before the competent authority, the Mandal Revenue Officer, Kovur is not justified in directing the petitioners to stop aqua culture in their agricultural lands. The learned counsel took me to the applications submitted by the petitioners to the Chairman, District Aqua Culture Authority, Nellore District and the Assistant Director of Fisheries, Secretary, District Aqua Culture Authorities, Nellore District. He also took me to certain observations made by the Mandal Executive Magistrate, Kovur in his order dated 26.07.2003. Adverting to certain observations made by the Mandal Executive Magistrate in his order, the learned counsel contends that the petitioners cannot be penalized for not disposing their representations by the concerned authorities. A further submission has been made that the fish crop is being raised in the fresh water and thus, permission from the competent authority is not necessary. He also refers the letter dated 20.12.2003 addressed to the petitioners 6 and 8. The letter addressed to the petitioners 6 and 8 reads as follows:

> " In pursuance of the order in 2nd cited above the fresh water prawn culture will not comes under purview of Aqua culture Authority of India.

> The matter referred to Aqua Culture Authority of India. They have informed that the modalities for implementation of the direction of High Court of Judicature, Andhra Pradesh, Hyderabad bringing all farms of aqua culture under the regulatory powers of Aqua Culture Authority of India will be discussed in its forthcoming meeting which is yet to be conducted."

8. Learned Government Pleader for Revenue submits that the petitioners have been specifically directed by the Mandal Executive Magistrate to obtain permission from the competent authority and to stop their activities till permission is obtained and as the petitioners did not choose to question the order passed by the Mandal Executive Magistrate, they cannot be permitted to contend that they are entitled to continue their aqua culture commenced some years ago.

9. Undisputedly, Mandal Executive Magistrate directed the petitioners to obtain necessary permission from the Aqua Culture Authority for conversion of their agricultural lands into aqua culture. The Mandal Executive Magistrate directed the petitioners to stop their activities till permission is acquired. The Mandal Executive Magistrate passed this order on 26.07.2003. The petitioners have not obtained any permission from the competent authority. When a show cause notice has been issued to them, only the petitioner No.6 and one Krishna Reddy submitted explanations on 04.05.2005. In their explanation they stated that they have closed their aqua culture on 31.08.2005. The other petitioners remained silent and they did not choose to give explanation to the notices served on them on 04.05.2005. The petitioners 1 to 5, 7 and 8 having not submitted any explanation to the show cause notice cannot be permitted to contend that the order impugned in the writ petition is arbitrary and violative of principles of natural justice. Petitioner No.6 having stated in his explanation that he would close aqua culture by 31.08.2005 cannot be permitted to express any grievance against the orders impugned in the writ petition.

10. In the result, I find the writ petition is devoid of merits and the same is

dismissed. No costs.

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B.SESHASAYANA REDDY, J.

Date: 20th December 2005.

BSB